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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,524	12/19/2000	Ronald W. Hall	7780.650US01 (3M REF.0011	5167
32692 7590 06/29/2012 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER BRINEY III, WALTER F	
			ART UNIT	PAPER NUMBER
			2614	
			NOTIFICATION DATE	DELIVERY MODE
			06/29/2012	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD W. HALL, DARYL T. BURKHARD, and
HARRY B. TAYLOR

Appeal 2010-002475
Application 09/740,524
Technology Center 2600

Before KALYAN K. DESHPANDE, JASON V. MORGAN, and
MICHAEL R. ZECHER, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 23-40. Claims 1-22 have been cancelled. Br. 4. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented a system, method, and apparatus for establishing operational settings between a programmable headset and a programming unit. According to Appellants, the programming unit communicates with the programmable headset by sending infrared light signals via an infrared light emitter located on the programmable unit to an infrared light detector located on the programmable headset. *See Abstract.*

Illustrative Claim

23. A system of programmable headsets comprising:
- (a) a plurality of programmable headsets, wherein each headset comprises:
 - (i) a headband; and
 - (ii) an electronics housing including:
 - (1) a headset infrared light detector arranged to receive infrared light signals, convert the infrared light signals into electric signals and supply the electric signals to an output, the headset infrared light detector being located in a detector portion of the electronics housing;
 - (2) a headset signal processing device with an input coupled to the output of the headset infrared light detector for processing the electric signals supplied by the headset infrared light detector;
 - (3) a transmitter operably connected to the headset signal processing device; and

- (4) a receiver operably connected to the headset signal processing device; and
- (b) a programming unit comprising:
 - (i) a programming unit signal processing device with an output; and
 - (ii) a programming unit infrared light emitter operable connected to the output of the programming unit signal processing device;
 - (iii) wherein the programming unit signal processing device is configured to output a signal to the programming unit infrared light emitter containing the operation frequency for the transmitter and the receiver for transmission by the programming unit infrared light emitter to the headset infrared light detector.

Prior Art Relied Upon

Lee	US 5,247,380	Sept. 21, 1993
Ruppert	US 6,236,969 B1	May 22, 2001 (filed July 31, 1998)
Takahashi	US 6,525,854 B1	Feb. 25, 2003 (filed Dec. 23, 1998)

3M Headset Intercom System Model C960, Operating Instructions, pp. i-iv and 1-21 (1999) (“3M”).

Rejections on Appeal

Claims 23-25, 27-30, 32, 35, and 37-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of 3M and Ruppert. Ans. 3-13.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of 3M, Ruppert, and Takahashi. Ans. 13-15.

Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of 3M, Ruppert, Takahashi, and well known prior art (otherwise known as Official Notice). Ans. 15-17.

Claims 33, 34, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of 3M, Ruppert, and Lee. Ans. 17-19.

Examiner's Findings and Conclusions

The Examiner finds that 3M's disclosure of using a wired connection to program the headset to the same channel as the base station, in conjunction with Ruppert's infrared ("IR") communication between the base station and the headset, teaches or suggests an IR communication from the base unit that contains the operation frequency of the transmitter and receiver for transmission to the telephone headset's IR interface, as required by independent claim 23. *See* Ans. 4-8 and 21-23. Further, the Examiner finds multiple suggestions or motivations derived from the teachings of 3M and Ruppert that support the incorporation of an IR interface/communication between 3M's base station and headset. *See* Ans. 6 and 24-33. The Examiner also finds that since the suggestions or motivations are derived from the cited prior art, the obviousness rejection of independent claim 23 is not based on impermissible hindsight. Ans. 33.

Appellants' Contentions

With respect to independent claim 23, Appellants contend that Ruppert does not teach or suggest an IR communication from the base unit that contains the operation frequency for the transmitter and the receiver for transmission to the telephone headset's IR interface. Br. 11. Further, Appellants argue that the Examiner does not provide a sufficient motivation

to combine 3M and Ruppert because the Examiner only addresses the first modification to 3M's system—namely adding an IR port—not the second modification to 3M's system—namely configuring 3M's base station to send an IR signal containing the operating frequency via an IR port to the headset. *See* Br. 12. Appellants also allege that the Examiner engages in impermissible hindsight reconstruction. *See* Br. 12-13. Appellants rely upon the same arguments presented for the obviousness rejection of independent claim 23 to rebut the obviousness rejection of independent claims 32 and 35. *See* Br. 14-15.

II. ISSUE

Did the Examiner err in concluding that the combination of 3M and Ruppert renders independent claims 23, 32, and 35 unpatentable? In particular, the issue turns on whether:

(a) the combination of 3M and Ruppert teaches or suggests “wherein the programming unit signal processing device is configured to output a signal to the programming unit infrared light emitter containing the operation frequency for the transmitter and the receiver for transmission by the programming unit infrared light emitter to the headset infrared light detector,” as recited in independent claim 23, and similarly recited in independent claims 32 and 35; and

(b) the Examiner provides an articulated reason with some rational underpinning to combine 3M and Ruppert.

III. ANALYSIS

We have reviewed the Examiner's obviousness rejections in light of Appellants' contentions that the Examiner has erred. We disagree with Appellants' conclusions. The Examiner summarizes and addresses each of Appellants' contentions with respect to independent claims 23, 32, and 35. *See* Ans. 19-34. Accordingly, we adopt as our own: 1) the findings and reasons set forth by the Examiner in the Final Rejection from which this appeal is taken (*see* Ans. 3-19); and 2) the reasons set forth by the Examiner in the Answer in response to Appellants' Brief (*see* Ans. 19-34). Nonetheless, we highlight specific findings and arguments as follows.

In contesting the rejection of independent claim 23, we note that Appellants merely attack Ruppert in isolation, rather than attack the combined teachings of 3M and Ruppert relied upon by the Examiner to formulate the rejection of the disputed claim limitation. *See* Br. 11. This argument is unavailing because it focuses primarily on Ruppert's alleged shortcomings. It does not persuade us of error in the Examiner's position, which is based on the collective teachings of 3M and Ruppert. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) ("Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.").

Further, we are not persuaded by Appellants' argument that the Examiner does not provide a sufficient motivation to address the second significant modification to 3M's system—namely configuring 3M's system to send an IR signal containing the operating frequency via an IR port to the headset. *See* Br. 12. Nor are we persuaded by Appellants' argument that the Examiner engages in impermissible hindsight reconstruction. *See* Br. 12-13.

Upon reviewing the record before us, we find that the Examiner's suggestions to modify 3M with the teachings of Rupert in order to achieve the claimed invention suffice as articulated reasons with some rational underpinnings to establish a prima facie case of obviousness. *See* Ans. 8 and 23-33.

In addition, we find that an ordinarily skilled artisan would have found it obvious to substitute 3M's wired connection used to establish the same operation channel between the base station and headset (22-23; Figure 22), with Rupert's wireless connection between the IR interface located on the base unit and the IR port located on the telephone headset (col. 6, l. 63-col. 7, l. 13). We note that the mere substitution of Rupert's wireless connection for 3M's wired connection predictably uses prior art elements according to their established functions—an obvious improvement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). Moreover, Appellants have not provided any evidence that such a substitution is beyond the level of an ordinarily skilled artisan. *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

It follows that the Examiner has not erred in rejecting independent claims 23, 32, and 35, and dependent claims 24-31, 33, 34, and 36-40 not separately argued with particularity.

IV. CONCLUSION

The Examiner has not erred in rejecting claims 23-40 as being unpatentable under 35 U.S.C. § 103(a).

V. DECISION

We affirm the Examiner's decision to reject claims 23-40.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc